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No. 92-1189

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

COLUMBUS-AMERICA DISCOVERY GROUP, INC.,
Petitioner,

v.

ATLANTIC MUTUAL INSURANCE COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE OF TEACHERS AND ADMINISTRATORS OF SECONDARY SCHOOLS, EDUCATIONAL TELEVISION, HAM RADIO OPERATORS, AND OTHERS INTERESTED IN PUBLIC EDUCATION IN SUPPORT OF PETITIONER

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Teachers and administrators of secondary schools, educational television, ham radio operators, and others interested in public education * hereby move, pursuant to

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* These educators and administrators include Reggy Brasington, Director of Grants and International Development, University of South Carolina; Ms. Carol Wolfenbarger and Ms. Patti Bricker, both of Pleasantview Middle School in Grove City, Ohio; Ms. Donna Schell, Mountainside Middle School, Scottsdale, Arizona; Dr. Mary Kennerly, Principal, Nursery Road School, Columbia, South Carolina; Dr. Michael Turner, Assistant Superintendent for Instruction,

Rule 37.2 of the Rules of this Court, for leave to file the attached brief as *amici curiae*. Counsel for the petitioner has consented to the filing of this brief; counsel for the respondents have refused consent.

This group of *amici curiae* seeks to encourage curiosity and stimulate learning by providing a variety of educational opportunities to secondary school children. This group believes that the exploration of abandoned shipwrecks provides a significant educational programming opportunities, and supports policies that promote and encourage exploration and discovery. The challenge of locating and recovering deep-water shipwrecks was considered impossible just 40 years ago. Today, modern telecommunications enable people to participate in a unique voyage of discovery to the bottom of the deep seas. This "live documentary," can be customized to meet the expectations of specific audiences. The end result is an extraordinary opportunity for shared exploration, discovery and adventure in what has become the age of public discovery. Daniel J. Boorstin, *Discoverer & Inventors, in Inventors and Discoverers: Changing Our World* 6, 11 (National Geographic ed., 1988).

Interactive videodiscs have been created, based on the *S.S. Central America* Project, as an educational multimedia collection geared to middle and secondary schools. Video segments from the *S.S. Central America* project

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Lexington, South Carolina; Dr. Joan Assey, Director of Staff Development, Columbia, South Carolina; Ms. Beverly Heoitt, Teacher in the Performance Based Program for Dropout Prevention and Retrieval, Columbia, South Carolina; Mrs. Aleda Anderson, Coordinator of Computer Education, Ballentine, South Carolina; Ms. Katherine Famall, Coordinator of Science Education, Ballentine, South Carolina; Mr. Bob Truex, President Emeritus of Columbia Amateur Radio, Ridgeway, South Carolina; Ms. Roberta Ferrell, Coordinator of Academically and Artistically Gifted Programs, South Carolina; Tom Clark, Vice President for Production, South Carolina Educational Television; Charles Carmichael, Science Teacher, Lexington School District One.

include more than 300 diagrams, maps, charts, and still photos to further illustrate key ideas and concepts. Using the interactive library, teachers and students can quickly find the segments they need and arrange them to create lesson plans and student reports. Curriculum topics include the scientific method, marine biology, deep sea ecosystems, archaeology, marine technology, United States history, economics, the history of gold, and problem solving.

In addition to the interactive videodiscs, Columbus-America Discovery Group has created numerous educational opportunities for secondary schools studying the historical and scientific findings and technological developments of the *S.S. Central America* Project. For instance, the Columbus-America Discovery Group visited secondary schools and allowed children to communicate live, via ham radio operators, with the Columbus-America Discovery Group's ship in the Atlantic Ocean.

Educational opportunities are available not only to the young, but to students of all ages. The exploration of shipwrecks offers a unique interdisciplinary educational opportunity. Few programs of study incorporate so many disciplines into a single program as the exploration of abandoned shipwrecks. Abandoned shipwrecks present a window in time, allowing students to understand the important role history plays in every day life.** The study of long-lost shipwrecks allows students to experience life as it was lived in a bygone era.

However, the *amici curiae* believe that if the Fourth Circuit's decision is allowed to stand, opportunities for educational endeavors such as those mentioned above will simply not exist. By affording ageless vitality to stale claims many decades old, the Court of Appeals' decision

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** For example, without years of extensive historical research, Columbus-America may not have discovered the Central America's location.

serves to discourage both venture capitalists from investing in shipwreck discovery and entrepreneurs from starting discovery groups, all of which will result in the loss of educational opportunities.

For these reasons, the Court should grant this motion for leave to file the attached brief amici curiae in support of the petitioner.

Respectfully submitted,

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February 16, 1993

QUESTION PRESENTED

May admiralty courts continue to infer abandonment of long-lost shipwrecks from the passage of many decades, non-use, and all other relevant facts and circumstances, and accordingly award ownership of a shipwreck to those who discover, recover and conserve it under the law of finds; or must courts award title to purported insurers and their successors who claim ownership of a shipwreck under the law of salvage on grounds that abandonment can never be found absent clear and convincing evidence that the purported owners expressly renounced title?

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STATEMENT OF INTEREST

Amici are a group of individual teachers and administrators in secondary schools in different parts of the nation, executives for educational television, directors of school programs for the gifted, programs for dropout prevention and retrieval, ham radio operators, as well as various other individuals interested in education and the opportunities offered by long-lost and abandoned shipwrecks as a tool for advancing public and private educa-

tion.[1] During the *S.S. Central America* Project, each has been involved in, or impressed by, the interdisciplinary nature of the discovery, recovery and conservation of long-lost and abandoned shipwrecks.

Because of the inherently fascinating attributes of long-lost shipwrecks, they are wonderful devices for capturing, and maintaining, the attention of people of all ages—especially students who are in the formative years. Moreover, the study of such shipwrecks requires involvement of a number of different fields of human learning, including the fine arts (such as photography), physical sciences (such as biology) and social sciences (such as history).

Amici are deeply distressed over the court of appeals' decision, and its practical effects on projects for deep sea exploration, such as the *S.S. Central America* Project. Because of the tremendous educational opportunities provided by such projects, and the need for ample incentives, certainty and predictability in the law to allow development of the needed technologies and educational programs

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[1] These educators and administrators include Reggy Brasington, Director of Grants and International Development, University of South Carolina; Ms. Carol Wolfenbarger and Ms. Patti Bricker, both of Pleasantview Middle School in Grove City, Ohio; Ms. Donna Schell, Mountainside Middle School, Scottsdale, Arizona; Dr. Mary Kennerly, Principal, Nursery Road School, Columbia, South Carolina; Dr. Michael Turner, Assistant Superintendent for Instruction, Lexington, South Carolina; Dr. Joan Assey, Director of Staff Development, Columbia, South Carolina; Ms. Beverly Heoitt, Teacher in the Performance Based Program for Dropout Prevention and Retrieval, Columbia, South Carolina; Mrs. Aleda Anderson, Coordinator of Computer Education, Ballentine, South Carolina; Ms. Katherine Famall, Coordinator of Science Education, Ballentine, South Carolina; Mr. Bob Truex, President Emeritus of Columbia Amateur Radio, Ridgeway, South Carolina; Ms. Roberta Ferrell, Coordinator of Academically and Artistically Gifted Programs, South Carolina; Tom Clark, Vice President for Production, South Carolina Educational Television; Charles Carmichael, Science Teacher, Lexington School District One.

to continue, and because they believe that confusion and conflict in the applicable legal regime hurt us all, *Amici* respectfully request the Court to grant review.

THE PETITION FOR CERTIORARI SHOULD BE GRANTED

I. THE DECISION OF THE COURT OF APPEALS RAISES AN ISSUE OF SUBSTANTIAL IMPORTANCE BECAUSE IT THREATENS TO DIMINISH INVALUABLE EDUCATIONAL OPPORTUNITIES MADE POSSIBLE BY MODERN TELECOMMUNICATIONS

A. Developments in Marine Technology, Coupled With the Recognition of the Doctrines of "Telepresence" and "Telepossession," Enable People Worldwide to Participate in the Exploration and Discovery of the Deep Sea and Other Remote Environments

The urge to discover has led people to the most isolated areas of the planet, from its highest mountains to its icebound poles, on to the moon and beyond. But one frontier has stubbornly resisted exploration: the deep ocean. It is this frontier that Columbus-America was created to explore.

The challenge of recovering deep-water shipwrecks was considered very difficult, if not impossible, just 40 years ago. Only in the last several decades has sonar technology been developed that allows broad-swath scanning of the ocean floor. And now, submersibles have been designed that are capable of performing a full range of precise recovery tasks in the deep ocean.

The recovery vehicle *Nemo*, developed by Columbus-America, is one such device. *Nemo* is equipped with stereo, video, and still cameras, and uses robotic arms to retrieve artifacts. While earlier submersibles were designed for limited survey and sampling, *Nemo* is designed to perform the far more difficult and delicate tasks re-

quired for full recovery. Furthermore, *Nemo* is entirely remote-controlled. *Nemo* is operated by a crew of scientists and technicians who control the vehicle's movements with the aid of teleoperational systems. *Nemo*'s design, sophisticated sensing and imaging capabilities, and operational precision are on the cutting edge of deep-water technology.

The use of remotely operated vehicles (ROVs), such as *Nemo*, make it substantially more efficient to explore the depths of the seas. ROVs have necessitated the emergence of two new legal doctrines, "telepresence" and "telepossession". These doctrines substitute the presence of an ROV for actual human presence in the ocean, allowing the human operator to acquire legal possession and presence. *Columbus-America Discovery Group v. Unidentified, Wrecked And Abandoned Sailing Vessel*, 1989 A.M.C. 1955, 1958 (E.D.Va. 1989). Acquiring possession and title of an object through telepossession requires: 1) locating the object; 2) real time imaging of the object; 3) ability to place teleoperated or robotic manipulators near the object that are capable of manipulation through human direction; and 4) present intent to control the location. *Id.; see also* Drew F.T. Horrell, Note, *Telepossession Is Nine-Tenths Of The Law: The Emerging Industry Of Deep Ocean Discovery*, 3 Pace Y.B. Int'l. Law 309, 339 (1991). Control may be exercised through a combination of live video-feed, computer imaging, still photos, and manipulation by the robotic arms of ROVs. *Columbus-America*, 1989 A.M.C. at 1958.

Modern telecommunications allowing such "telepresence" also enable people to participate in a unique voyage of discovery to the bottom of the deep seas. The vehicle is the "live documentary," which can be customized to meet the expectations of specific audiences. The end result is an extraordinary opportunity for shared exploration, discovery and adventure in what has become the age of public discovery. Daniel J. Boorstin, *Discoverers &*

Inventors, in Inventors and Discoverers: Changing Our World 6, 11 (National Geographic ed., 1988).

B. Deep Sea Exploration and Discovery of Abandoned Shipwrecks and Other Abandoned Maritime Items Provide New Opportunities for Millions of Individuals for Education, Enjoyment, and Adventure

Although the great explorers are part of our collective heritage, they are distant, both in time and ideas. However, there are many modern day discoverers, such as Columbus-America's Thommy Thompson, who have tales of exciting adventures to tell. Through the doctrines of "telepresence" and "telepossession," television can bring their stories to millions so that we can all share in their explorations and adventures.

In cooperation with Columbus-America, "Treasures of a Lost Voyage" has been aired on the Discovery Channel and is now available on home video. Millions of viewers have joined the team of high-tech adventurers and scientists on the most ambitious effort at deep-water discovery ever undertaken. In "Treasures of a Lost Voyage," *Nemo* is shown locating hundreds of millions of dollars worth of gold dating back to the California Gold Rush. This video advances the public's understanding of American history as well, prefacing Columbus-America's efforts with an account of the California Gold Rush and the events that led up to the sinking of the *S.S. Central America*.

Based on the *S.S. Central America* Project, the Discovery Channel has also developed two videodisc curricula on investigating science and history as part of its Interactive Library. The Discovery Interactive Library is an educational multimedia collection geared to middle and secondary schools. Each title in the Library is effective on videodisc alone or on videodisc used in conjunction with a personal computer. Video segments from the *S.S. Central America* Project include more than 300 diagrams,

maps, charts, and still photos to further illustrate key ideas and concepts. Teachers and students can quickly find the segments they need and arrange them to create lesson plans and student reports. The program includes a bound Classroom Guide containing an overview of the contents of the videodisc, which allows teachers to develop lesson plans without access to a videodisc player. The Guide also provides a framework for students using the video material in individual and team projects.

A simulation on one of the discs allows students to employ the scientific method to find and explore the gold-laden wreck of the *S.S. Central America.* Through the camera's eyes on a robotic submarine, students can view the 133-year-old ship and encounter a rich array of aquatic life a mile and a half under the sea. They learn how the scientists use modern technology to study ancient forms of life. The disc also presents a taxonomy of deep-sea species found around the wreck site. Curriculum topics include the scientific method, marine biology, deep sea ecosystems, archaeology, and marine technology.

Another videodisc allows students to journey back to 1857, when the *S.S. Central America* sank. They can experience the California gold rush, westward expansion, changing social values, and new technologies. Curriculum topics include U.S. history, economics, the history of gold, and problem solving.

Columbus-America has created an Education Program to provide an outreach function to schools for the purpose of disseminating the historical and scientific findings and Project. This Project presents many extraordinary educational opportunities including (1) the stimulation of student interest in a variety of different disciplines, (2) the development of students' creativity, independent thinking, and problem-solving skills, and (3) the demonstration of the value of interdisciplinary teamwork to solve complex problems.

Six South Carolina schools have communicated live with members of the *S.S. Central America* Project via ham amateur radio. A dozen crew members, including Project director Tommy Thompson, spent two hours on three different days responding to questions from students. The students asked the crew members such questions as how much the gold bars found aboard the *S.S. Central America* were worth when it sank, and how much they would be worth today. Students also wanted detailed information on *Nemo*, water pressure, oceanography, and topography. The radio communications were incorporated into math, science, language, social studies, and technological experiences. Students calculated the monetary value of the gold bars, followed the history of the gold rush, studied eels, sharks, and other ocean life forms, and plotted the latitude and longitude of the ship.

Educational opportunities are available not only to the young, but to students of all ages. The exploration of shipwrecks offers an unique interdisciplinary educational opportunity. Few programs of study incorporate so many disciplines into a single program as the exploration of abandoned shipwrecks. Abandoned shipwrecks present a window in time, allowing students to understand the important role history plays in every day life.[2] The study of long-lost shipwrecks allows students to experience life as it was lived in a bygone era.

Shipwrecks are equally valuable as a tool for exploring the natural sciences. The scientific method can be applied to deep sea expeditions, giving students fascinating new ways of looking at topics which previously held little interest for them. The deep-sea ecosystem created by shipwrecks can be explored and analyzed, and the ocean's organisms studied. The study of shipwrecks provides an effective method for teaching students about the physi-

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[2] For example, without years of extensive historical research, Columbus-America may not have discovered the *S.S. Central America's* location.

cal, chemcial, geological, and biological nature of the oceans. The properties of specific materials such as wood and gold and the effects of different elements on them can easily be taught and understood. An important educational aspect of teaching about shipwrecks is that students are at once able to learn real life applications of their studies. Students find that learning can be interesting and exhilarating. Studying shipwrecks encourages students to acquire an appreciation of the important roles that the humanities, social sciences, and physical sciences play in our lives. Most importantly, the study of shipwrecks and deep sea exploration sparks the imagination. Students can see firsthand how vision, hard work, ingenuity—and dreams—pay off in a free society.

Abandoned shipwrecks provide educational opportunities at many levels. For example, the exploration of the *S.S. Central America* has provided opportunities for advanced scientific education. For underwater biologists, the recovery operation offers a rare opportunity to study a deep water ecosystem in action. In the dark, cold, barren environment of the Blake Ridge, the *S.S. Central America* has become a biological oasis, home for a host of attached and free-swimming animals. Scientists from several universities have accompanied the project team in order to obtain new and unusual specimens of aquatic life for our national collection. In addition, the *S.S. Central America* Project is important as a pioneering venture in the new field of deep-water exploration. The Project has shown that it is possible not only to study, but also to retrieve, items of value that lie a mile or more beneath the ocean surface. And it has done so without government funding. The implications for the future of privately funded scientific exploration are intriguing.

Given the ongoing public fascination with the *S.S. Central America* Project, the continuing exploration at the shipwreck site, and the promise of greater historical, scientific, and numismatic findings, these educators believe that the *S.S. Central-America* Project has the poten-

tial to provide enormous educational benefits for many years to come.

II. THE COURT OF APPEALS' OPINION IMPROPERLY BURDENS THOSE WHO RECOVER ABANDONED SHIPWRECKS AND OTHER ABANDONED MARITIME ITEMS WITH A CLOUD OF LITIGATION AND STALE CLAIMS

The Court of Appeals' decision breaks with other circuits that either recognize a presumption of abandonment or draw an inference of abandonment from circumstantial evidence. The Court of Appeals imposes the burden upon the finder of proving abandonment by clear and convincing evidence "such as an owner's express declaration abandoning title" in any case where one purporting to have succeeded to the original owner's interest appears to assert a claim. Pet. App. 27a.

By allowing ageless vitality for stale claims many decades old, the Court of Appeals' decision could likely chill future deep-sea discovery. This serves to discourage both venture capitalists from investing in shipwreck discovery and entrepreneurs from starting discovery groups, all of which will result in the loss of educational opportunities.

The Court of Appeals' decision promotes litigation and delay. The decision invites the presentation of stale, speculative, and possibly fraudulent claims against every finder of a long-lost shipwreck, imposing costly and time-consuming litigation on every such expedition, and assuring the scavenging of long-lost claims by enterprising counsel, which under the decision below, threatens to become a more profitable industry than the exploration of long-lost shipwrecks by high-tech entrepreneurs.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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